

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26..02..2016

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.828 of 2011

P.Ganesan

... Appellant/Accused 2

-Versus-

State by its
Inspector of Police,
Sulur Police Station,
Coimbatore District.
[Crime No.297 of 2007]

... Respondent

Appeal filed under Section 374(2) of the Code of Criminal Procedure against the conviction and sentence passed by the learned Additional Sessions Judge, Fast Track Court No.IV, Tiruppur, in S.C.No.155 of 2009 dated 30.09.2010.

For Appellant : Mr.M.Sankar

For Respondent : Mr.M.Maharaja, Additional
Public Prosecutor

JUDGEMENT

[Judgment of the court was delivered by S.NAGAMUTHU.J.,]

The Appellant is the 2nd accused in S.C.No.155 of 2009 on the file of the learned Additional Sessions Judge, Fast Track Court No.IV, Tiruppur. The 1st Accused was one Mr.Durairaj. The trial court framed as many as four charges as detailed below:-

Number of Charge	Charge(s) framed against	Charges framed under Section
1	A1 and A2	120(B) r/w 364, 394 and 302 of IPC
2	A2	364 r/w 109 of IPC
3	A1	394 of IPC
	A1 and A2	394 r/w 397 of IPC
4	A1 and A2	302 of IPC

By judgement dated 30.09.2010, the trial court acquitted A1 from all the charges, but, convicted the appellant/A2 alone under Sections 302, 364 and 394 r/w 397 of IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.10,000/- in default to undergo rigorous imprisonment for six months for offence under Section 302 of IPC; to undergo rigorous imprisonment for five years and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for six months for offence under Section 364 of IPC; and to undergo rigorous imprisonment for seven years and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for six months for offence under Section 394 r/w 397 of IPC. Challenging the above said conviction and sentence, A2 is now before this court with this criminal appeal.

2. The case of the prosecution in brief is as follows:- The appellant/A2 and A1-Durairaj, during the year 2007, were working in a private cotton mill known as "Arasur Shri Rani Lakshmi Mill". They were staying in the quarters meant for the workers of the said mill. P.W.10 Ms.Kalaiarasi was also working in the same mill. A1 had fallen in love with her. A1 had borrowed a sum of Rs.10,000/- from P.W.10 by pledging her ear studs of P.W.10. P.W.10 demanded A1 to redeem her ear studs and to return the same to her. A1 had no money to redeem the pledged jewels. He told A2, the appellant herein about the same. It is the case of the prosecution that A1 and A2, therefore, decided to kill the deceased Mrs.Thulasiammal, who was also working in the same mill and to commit robbery of the jewels worn her. Thus, according to the case of the prosecution, the appellant/A2 and A1 had conspired together to commit the crime.

3. It is further alleged that on 14.05.2007, in the usual course, the deceased had come to the mill for work. P.Ws.2 and 3 were co-workers of the deceased. P.W.1 was working in the said mill as Supervisor. At about 03.00 p.m. that was during second shift, P.W.1 was verifying the attendance of the workers. He found that the deceased was not present at her work spot. He inquired P.Ws.2 and 3, the co-workers of the deceased in a particular section. P.Ws.2 and 3, just before that, found the deceased being taken by A2 towards the cotton go-down. P.Ws.2 and 3 did not give much importance for the same. Thereafter, the deceased did not return. P.Ws.2 and 3 informed the same to P.W.1. P.Ws. 1 and 2 went to the cotton go-down. There, to their shock, they found the deceased lying in a pool of blood and there were injuries on her body. She was struggling for life. A2 was not seen there. Immediately, P.W.1 and one Mr.Ganesh took the deceased in an Ambulance to KGM Hospital. On examining her, the Doctor declared her dead on her way to hospital. P.W.1 informed the relatives of the deceased and then, went to Sular Police Station and made a complaint.

4. P.W.16, the then Inspector of Police, on receiving of the complaint under Ex.P.1 registered a case in Crime No.297 of 2007 under sections 302 and 380 of IPC. Ex.P.14 is the FIR. Then, he forwarded Exs.P.1-complaint and Ex.P.14- FIR to the court which were received by the learned jurisdictional Magistrate at 06.00 p.m. on 13.05.2007. Since the assailants were not known, in Ex.P.1-complaint, P.W.1 did not name any of the assailants. P.W.16, thereafter, handed over the case diary to the Inspector of Police for investigation.

5. P.W.20, the then Inspector of Police, took up the case for investigation. He proceeded to the place of occurrence and prepared an observation mahazar (Ex.P.2) and a rough sketch (Ex.P.19) at the place of occurrence in the presence of P.W.6 and another witness. He also recovered blood stained earth (M.O.2) and sample earth (M.O.3) from the place of occurrence in the presence of the same witnesses. Then, on going over to the hospital, he conducted inquest on the body of the deceased. Ex.P.20 is the inquest report. Thereafter, he forwarded the body for post-mortem. P.W.19-Dr.T.Jeyasingh, conducted autopsy on the body of the deceased at 10.45 a.m. on 14.05.2007. He found the following injuries on the body of the deceased:-

"Antemortem injuries:

(1) A cut injury noted on the mid occipital region measuring 8 x 2 cm muscle deep.

(2) A cut injury 4 x 2 cm muscle deep noted on right temporal region.

(3) A cut injury measuring 5 x 1.5 cm x bone deep noted on mid forehead. Both ends are sharp. On dissection, sub scalp contusion noted on the left frontal region measuring 5 x 4 cm x mid parieto-occipital region measuring 10 x 3 cm. A depressed fracture noted on mid frontal bone measuring 4 x 3 cm brain deep. Diffuse subdural and sub arachnoid hemorrhage noted on both cerebral hemisphere. Brain cut section shows congested.

(4) A cut injury measuring 3 x 1.5 x bone deep noted on left side cheek, 6 cm medial to left ear lobe and 2 cm below to left eye. One end (medial) is sharp the other end is blunt. On dissection of the wound the under lying maxillary bone fracture.

(5) A contusion noted on left chin measuring 7 x 3 cm, 3 cm lateral to mid line 4 cm below and medial to left ear lobe. On dissection the underlying mandible is fractured with surrounding muscles bruised.

(6) Transverse contusion noted on the upper most part of neck in its front measuring 10 x 2 cm. On dissection the underlying superficial and deep muscle are bruised. The thyroid and cricoid cartilages are found vertically fractured. The hyoid bone is found fractured in its upper 1/3 of left side greater cornu.

(7) A cut injury noted on left side upper lip measuring 2 x 1 cm x muscle deep.

(8) A curved nail mark measuring 1 cm x .25 cm x skin deep noted left side lower cheek.

(9) Inner aspect of both lips are contused.

(10) A cut injury 3 x 1.5 cm x muscle deep noted on top of right shoulder.

Other Findings:-

- Pleural and peritoneal cavity - Empty

- Lungs cut section congested

- Heart chambers empty, coronaries patent.

- Stomach contains 150 gm of partially digested food material, No specific smell, and Mucosa congested.

- Small intestine contains 30 ml of bile stained fluid, No specific smell, Mucosa congested.

- Liver, Spleen & Kidneys cut section congested.

- Urinary bladder empty

- Viscera preserved for chemical analysis.

- Sample of blood preserved."

Ex.P.18 is the post-mortem certificate. He gave opinion that the deceased would have died of shock and hemorrhage due to multiple injuries.

6. During the course of investigation, P.W.20, after the

post-mortem was over, recovered the blood stained and other clothes from the body of the deceased. On 14.05.2007, he arrested both A1 and A2 at 06.00 a.m. in the presence of P.W.7 and another witness. On such arrest, both the accused confessed one after the other. In the confession given by A1, he disclosed the place where he had hidden a lungi and a half sleeve shirt with blood stains. In pursuance of the said disclosure statement, he took the police and the witnesses near the compound wall of Arasur Shri Rai Lakshmi Mill and produced the lungi [M.O.5], half sleeve shirt [M.O.4] and iron rod [M.O.6] from the place of hideout. P.W.20 recovered the same under a mahazar (Ex.P.6) in the presence of the same witnesses. Then, in the disclosure statement made by A1, he disclosed the place where he had hidden a half sleeve shirt, brown colour pants, aruval and a gold chain. In pursuance of the same, he took P.W.20 and the witnesses to a bush near Arasur Shri Rani Lakshmi Mill and produced the Shirt (M.O.7), Pants (M.O.8) and Aruval (M.O.9). He also recovered a gold chain (M.O.1) on the disclosure statement made by A1. P.W.20 recovered the same, under a mahazar (Ex.P.9). On returning to the police station, P.W.20 forwarded both the accused to the court for judicial remand and forwarded the material objects to the court with a request to forward the same for chemical examination. In the course of investigation, P.W.20 examined many more witnesses including the official witnesses and collected the post-mortem and chemical analysis reports and on completing the investigation, he laid the final report against both the accused.

7. Based on the above materials, the trial court framed as many as four charges as detailed in the first paragraph of this judgement. They denied the same. In order to prove the same, on the side of the prosecution, as many as 20 witnesses were examined, 22 documents and 14 material objects were marked.

8. Out of the said witnesses, P.W.1 is the Supervisor of the Mill where both the accused and the deceased were working. P.Ws.2 and 3 were co-workers of the deceased. P.Ws.2 and 3 had seen the deceased being taken by A2 just before 03.00 p.m. on the day of occurrence to the cotton godown. They have told the same to P.W.1 and P.W.1 has also stated so. P.W.4 is the son of the deceased. He has stated that on receiving the intimation about the occurrence, he went to the hospital and found his mother dead. He has also found the gold chain (M.O.1) missing from her body. P.W.5 is the watchman of the godown. He has stated that around 03.15 p.m. on the day of occurrence, A2 left the mill in a tense mood. According to P.W.5, he noticed A2 near the main gate of the mill. P.W.6 has spoken about the preparation of the observation mahazar and the rough sketch and also the recovery of the material objects from the place of occurrence by the investigating officer.

9. P.W.7 has spoken about the arrest of both the accused and the consequential recoveries of the material objects mentioned hereinabove. P.W.8-Doctor, has stated that the deceased was brought before him at 03.45 p.m. on 13.05.2007 at KGM Hospital and on examining the deceased, he declared her dead. Then, the body was sent for Coimbatore Government Medical College Hospital for post-mortem. P.W.9 is the Pawn Broker of shop in which the ear studs belonging to P.W.10 were pledged already by A1, that was, before the occurrence. At the time of pledging the jewel, according to P.W.9, A2 had also come. P.W.10 has spoken about the borrowal of rupees ten thousand by A1 and her handing over the ear stud to A1. P.W.11 has stated that he took the deceased in his ambulance to the hospital. P.W.12 has spoken about the photographs taken by him at the place of occurrence. P.W.13 is the Chief Executive of the Mill where A1 and A2 and the deceased were working. P.W.14 is the Head Clerk of the Court of Judicial Magistrate. He forwarded the material objects for chemical examination on the orders of the learned Judicial Magistrate. P.W.15 has stated that he took the body for post-mortem. P.W.16 has spoken about the registration of the case on the complaint of P.W.1. P.W.17 is a Fitter in ASR Mill. He has spoken about the fact that after the occurrence, A1 and A2 did not turn up for work. P.W.18 has spoken about the arrest of both the accused and the consequential recoveries of the material objects on the disclosure statements of the accused. P.W.19 has spoken about the autopsy conducted on the body of the deceased. P.W.20 has spoken about the entire investigation done by him and the filing of final report against both the accused.

10. When the above incriminating materials were put to both accused under Section 313 of the Code of Criminal Procedure, they denied the same. However, they did not choose to examine any witness on their side nor did they mark any document. Their defence was a total denial.

11. Having considered all the above, the trial court acquitted A1, however, convicted the appellant/A2 alone and sentenced him as detailed in the first paragraph of this judgement. That is how, A2 is now before this court with the present criminal appeal.

12. We have heard the learned counsel for the appellant/A-2 and the learned Additional Public Prosecutor appearing for the respondent/State and also perused the records carefully.

13. This is a case based on circumstantial evidence. Admittedly, the deceased was working in Arasur Shri Rani Lakshmi mill where both A1 and A2 and P.Ws.1 to 3 were also working. As a matter of fact, according to P.Ws.2 and 3, on the day of occurrence, the deceased was working in their section. P.Ws.2 and 3 have stated that just before 03.00 p.m. on the day of

occurrence, they found the deceased being led by A2 to the cotton godown. They did not take it seriously as it was quite normal in the work spot. When P.W.1 was verifying with the attendance and the presence of the workers, he found that the deceased was not in her section attending to her work. When he enquired P.Ws.2 and 3, they told that the deceased was taken by A2 to the cotton godown. Thus, from the evidence of P.Ws.2 and 3, the deceased was lastly seen alive just before 03.00 p.m. on 13.05.2007 and was taken by A2 to the cotton godown.

14. When P.Ws.1 to 3 went to the cotton godown at 03.00 p.m. they found that the deceased was lying in the cotton godown with injuries in a pool of blood. They have immediately taken her in the ambulance of P.W.11 to the hospital. P.W.8 Doctor on examining the deceased the Doctor declared her dead on her way to hospital. Thus, the prosecution has proved from the evidence of P.Ws.1 to 3 that the deceased was attacked and done to death in the cotton godown of the mill around 03.00 p.m. on the day of occurrence. These two circumstances have been clinchingly proved by the prosecution through the evidences of P.Ws.1 to 3, who are independent witnesses. They had no axe to grind against A2, the appellant herein. During cross examination also nothing has been elicited from them to disbelieve their testimonies. Therefore, we are inclined to believe P.Ws.1 to 3.

15. The next circumstance is the evidence of P.W.5, the watchman. He has stated that around 03.15 p.m. The appellant/A2 was found leaving the mill through the main gate in a tense mood. Though P.W.5 has been cross examined at length, nothing has been elicited so as to disbelieve him. Thus, from the evidence of P.W.5 the prosecution has established that A2 left the mill at 03.15 p.m. on the day of occurrence.

16. From the evidence of P.W.1 and P.W.17, the prosecution has proved that after the deceased was found in the cotton godown lying unconscious, the appellant/A2 was not found in the mill and he did not turn up thereafter for work also. Thus, the appellant/A2, who was seen taking the deceased to the cotton godown and was seen leaving the mill by 03.15 p.m. on the day of occurrence, was later on absconding and he did not turn up in the mill for work. This conduct of A2 gives rise to a presumption against A2 that he would have committed the murder of the deceased.

17. Then comes the vital circumstance namely, the arrest of the accused in the presence of P.W.7 at 06.00 a.m. on 14.05.2007 and on such arrest, A2 gave a voluntary confession out of which M.O.1, M.Os.7 to 9 were recovered. M.O.1 is the gold chain weighing 36.800 grams, which was worn by the deceased. P.W.4, the son of the deceased has identified the same. The fact that it had been stolen was already known and the chain was

identified by P.W.4 . We do not find any reason to reject the evidence of P.W.20 and P.W.7 who have stated about the disclosure statement made by A2 and the recovery of M.O.1. Thus, the prosecution has clearly established that A2 was found in possession of M.O.1 on 14.05.2007 at 11.30 a.m. As per section 114 of the Evidence Act, the only presumption that could be raised out of the possession of M.O.1 by the accused soon after the commission of theft is that it was this accused who committed the murder of the deceased and removed M.O.1 from the body of the deceased. Of course, this presumption is rebuttable. But, the appellant/A2 has not let in any evidence or brought on record any other material to rebut the said presumption. Form this legal presumption coupled with the other proved circumstances, as we have already concluded, the prosecution has clearly established that it was this accused who committed the murder of the deceased and removed M.O.1-Gold Chain. The recovery of M.Os.7 and 8 also further strengthens the case of the prosecution.

18. The learned counsel for the appellant/A2 would submit that the trial court has disbelieved the case of the prosecution as against A1 and, therefore, the case should be rejected in toto. We are not persuaded by the said argument. It is the settled law that if the court is able to separate the grains from the chaff, there can be no legal impediment to act upon the grains. Here, in this case, though the trial court has rejected the case of the prosecution as against A1, on that score, the case against the appellant/A2 cannot be rejected because the commission of the crime by A2, the appellant herein has been clinchingly proved by the circumstances, as we have dealt with already, which form a complete chain and they unerringly point to the guilt of the accused that by taking the accused to the cotton godown and by causing her death by attacking her with aruval and also by removing the gold chain from the body of the deceased, the appellant/A2 had committed the offences punishable under Sections 364, 302, 394 r/w 397 of IPC.

19. Now, turning to the punishment, the trial court itself has imposed only the minimum punishment which is the just punishment for each offence. Thus, we do not find any merit at all in this criminal appeal and the same deserves only to be dismissed.

20. In the result, the criminal appeal is dismissed. The convictions and the sentences imposed by the trial court on the Appellant/A2 are confirmed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To

1. The Additional Sessions Judge,
Fast Track Court No.IV,
Tiruppur, Tiruppur District.
2. The Inspector of Police,
Sulur Police Station, Coimbatore
District.
3. The Judicial Magistrate, Palladam
4. The Superintendent
Central Prison, Coimbatore
- 5.The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.M.Sankar Advocate sr.12289

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